

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, April 17, 2002, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Steve Duvall, Roger Larson, Patte Newman, Greg Schwinn, Cecil Steward, Mary Bills-Strand and Tommy Taylor (Gerry Krieser absent); Ray Hill, Jason Reynolds, Becky Horner, Brian Will, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held April 3, 2002. Newman moved to approve the minutes, seconded by Carlson and carried 8-0: Carlson, Duvall, Larson, Newman, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'; Krieser absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

April 17, 2002

Members present: Carlson, Duvall, Larson, Newman, Schwinn, Steward, Bills-Strand and Taylor; Krieser absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3359; COMBINED SPECIAL/USE PERMIT NO. 19; SPECIAL PERMIT NO. 1219K; AND FINAL PLAT NO. 02003, LEE'S PLACE 4TH ADDITION.**

Item No. 1.1a, Change of Zone No. 3359, and Item No. 1.1b, Combined Special/Use Permit No. 19, were removed from the Consent Agenda and scheduled for separate public hearing.

Carlson moved to approve the remaining Consent Agenda, seconded by Newman and carried 8-0: Carlson, Duvall, Larson, Newman, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'; Krieser absent.

Note: This is final action on the Lee's Place 4th Addition Final Plat No. 02003, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 3359
FROM O-2 SUBURBAN OFFICE TO O-3 OFFICE PARK
and
COMBINED SPECIAL PERMIT/USE PERMIT NO. 19
TO ALLOW AN INPATIENT STAY HOSPITAL,
OUTPATIENT AMBULATORY SURGICAL CARE CENTER,
OUTPATIENT HOSPITAL AND A BANK,
ON PROPERTY GENERALLY LOCATED
AT SO. 70TH STREET AND LINCOLNSHIRE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 17, 2002

Members present: Newman, Steward, Larson, Bills-Strand, Carlson, Duvall, Taylor and Schwinn; Krieser absent.

Staff recommendation: Approval of the change of zone and conditional approval of the combined special/use permit.

Proponents

1. W. Michael Morrow, 201 No. 8th, appeared on behalf of the applicant. This facility is already built at the northeast corner of 70th & Lincolnshire, currently occupied by Pinnacle Bank, Eye Surgical Associates and a medical office building. The applicant does not intend to make any changes to the exterior of the facility at all and none to the interior of the building except to enlarge some of the exit doors to make them wheelchair and handicap accessible.

Morrow further advised that this property sits on O-2 zoning. The zoning ordinance does not allow a "health care facility" within the O-2 zoning district, thus the request for O-3 Office Park. The entire property to the north all the way to "A" is already zoned O-3. Therefore, this is not an isolated change of zone. The primary reason for the request is to obtain the designation of "health care facility" to fall under the Nebraska Bureau of Health for inspection purposes, so that the patients can be told that the surgical center does comply with all state and federal rules and regulations. The applicant wants to assure and reassure the patients that they do in fact comply and will obtain a certificate from the state to operate the surgical center as a hospital.

An additional purpose for this request is because the facility is not currently designated and licensed as a hospital and therefore cannot serve Medicare patients because they can only go to a licensed hospital. This will allow this applicant to serve a number of elderly patients requesting services.

Morrow also advised the Commission that the applicant had initially requested only seven beds; however, the staff suggested they request 20 beds so that they do not have to come back in and request an amendment if the number of beds increases. Morrow indicated that the applicant has no intention to have a 20-bed hospital facility. The application was only amended to the full 20-bed facility because that is what the premises would allow.

Again, Morrow advised that there will be no exterior change to the existing facility other than the enlargement of a few of the doors to comply with state rules and regulations.

The applicant is requesting a waiver of the setback requirement, which is 15' under the O-3 zoning. When the facility was initially built under the O-2 zoning, only a 5' setback was required. The driving lanes for the parking flow into the driving lanes for the facility to the north (the Hampton office development). This applicant does not anticipate any problems. They have had contact with Mr. Hampton and there has been no objection.

Morrow also advised that Eye Surgical Associates did conduct a neighborhood meeting. In summary, Morrow stated that this application will basically allow patients to stay at the facility more than a 24-hour period.

Opposition

1. Julie Strahl, 7221 Whitestone Circle, testified in opposition. She stated that she is not testifying as a neighbor to gripe about noise and trash, but she is here to talk about safety of students that cross the parking lot every day after school as they go through this center. If they keep patients for longer than a day, Strahl believes that there will be increased traffic because it will require more support services. As it stands, when this property was developed, it was O-2 zoning and they didn't have to come to the neighborhood about what they were going to do because the use fit the O-2 requirements. There was a way for the children to bypass the bank and the parking lot, but that sidewalk was demolished as part of the building by 70th Street Properties and the neighbors were told that it would be the neighborhood's responsibility if they wanted the sidewalk reinstalled. She has talked with the principal at Morley School and the para-educator of the school. The possibility of increased traffic could cause more of a concern and there are already near misses of children darting out between rows of parked cars. She has 20 signatures of parents who agree that a condition should be attached to this special permit that 70th Street Properties reconfigure the parking lot to provide a sidewalk for crossing the parking lot. The parents do not want their children going down 70th Street and crossing three driveways as they go down Lincolnshire Drive.

Strahl noted the applicant's comments that they are not making exterior changes, but over time, if they keep people for two or three days, Strahl believes that the scope of their services might expand and they may have more traffic. Strahl submitted that it is this applicant's responsibility, financially and as a community neighborhood member, to assure the safety of the children.

Newman asked where the children are cutting through the parking lot. Strahl responded stating that there is a crosswalk at the Pinnacle Bank. There is a strip of grass and then when the children cross off the crosswalk off 70th Street, there is basically no sidewalk and they cut through the large parking lot because there isn't anywhere else for them to go, unless they walk down 70th Street to Lincolnshire. The parents do not want them walking down 70th Street. LPS does not have responsibility legally once the children leave the school grounds. There is a traffic signal and the children are monitored after they go across the street. There are stop signs on Lincolnshire but there is no traffic control on 70th.

Bills-Strand asked whether there is a sidewalk along Lincolnshire Road. Strahl indicated that there is. But there are three driveways on that sidewalk, and some of the parents do not want their children to walk down 70th Street. There is a sidewalk that currently runs along the side of the 70th Street Properties building, and Strahl suggested that they "could sort of L-shape one through there". She acknowledged that this would require some reconfiguration of the parking lot. The only sidewalk through the parking lot is right by the building.

Response by the Applicant

Morrow reminded the Commission that this is a medical office complex, ambulatory surgical care center and medical clinic. There is adequate sidewalk all along 70th Street and all along Lincolnshire. To require the applicant to install a sidewalk through their parking lot will expose the applicant to potential liability for children that get hurt walking through the parking lot. You risk extreme danger by putting a sidewalk through this parking lot. We have to have access through the parking area. We cannot provide an elevated sidewalk with no curb cuts through the parking lot. The sidewalk along Lincolnshire is adequate. To bring the children through the private property owner's property will exacerbate any type of safety problem that might be there today. There are adequate public sidewalks that are maintained by the city all around this complex. To put some kind of public/private easement through the middle of this parking lot is not acceptable from a safety standpoint. The applicant is totally opposed to putting a sidewalk off of 70th Street all the way up to the medical office building and through the parking lot.

Bob Findlay, the architect, approached the Commission and advised that some time ago they had worked with the city regarding this issue. They tried to put a sidewalk between the bank and the parking lot, but the city would not allow it because no one would be able to accept the liability. Findlay also advised that there was never a situation where the Eye Surgical Associates told the neighborhood that a sidewalk would be at the neighbors' expense.

Public hearing was closed.

CHANGE OF ZONE NO. 3359

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 17, 2002

Duvall moved approval, seconded by Bills-Strand and carried 8-0: Newman, Steward, Larson, Bills-Strand, Carlson, Duvall, Taylor and Schwinn voting 'yes'; Krieser absent.

COMBINED SPECIAL/USE PERMIT NO. 19

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 17, 2002

Duvall moved to approve the staff recommendation of conditional approval, seconded by Bills-Strand.

Newman stated that she will vote in favor. She can relate to the neighbors and their concerns but she does not know what the solution might be. She would think there should be some solution and she is hopeful that the applicant and the neighbors can get together with the city to work something out.

Steward also stated that he appreciates the neighborhood's concern for the safety of the children, but the typical pattern of any school, neighborhood and commercial district is that safety is provided at the intersections and sidewalk patterns related to the arterial. As long as we have provided sidewalks on the arterials, it appears that there is inadequate traffic control and he suggested the neighborhood petition the city for some solution on the traffic control issue.

Schwinn stated that he drives by 33rd and Vine and there are a lot of parents walking the children safely on all sides of the streets. This is probably a situation that the Morley PTO should work on as opposed to this developer.

Motion for conditional approval carried 8-0: Newman, Steward, Larson, Bills-Strand, Carlson, Duvall, Taylor and Schwinn voting 'yes'; Krieser absent.

SPECIAL PERMIT NO. 1964
FOR A PRIVATE DANCE/GYMNASTIC SCHOOL
ON PROPERTY GENERALLY LOCATED
AT SOUTH 8TH STREET, NORTH OF
PIONEERS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 17, 2002

Members present: Newman, Steward, Larson, Bills-Strand-Strand, Carlson, Duvall, Taylor and Schwinn; Krieser absent.

Staff recommendation: Denial.

Proponents

1. **Rich Bollerup** appeared on behalf of Nova Sports, the applicant, and introduced Paula Hutchinson and Jim Hutchinson.

2. **Paula Hutchinson** testified that she and her husband, Jim, are involved in the development of this project. The development of this project started with some discussion on behalf of some parents who expressed some disappointment that there wasn't more activity in the community for young people that was structured, but not highly competitive. Frequently, they find that parents in the community believe that kids who want to bounce and tumble and engage in vigorous physical activity for fun are found wanting because the programs in this area generally are a complete gymnastics program. This proposal is a large facility that would offer structured, but non-competitive, activity that children enjoy. It would be a tremendous benefit to the community because there is a marked absence in the market in Lincoln for such activity. There are several examples of this proposal in Omaha that are highly successful. The Hutchinsons have discussed this with families and there is much enthusiasm. This facility will provide tumbling, dance and trampling in one location. They anticipate state-of-the-art safety features that are available. There would be all sorts of fun things for the smaller children as well.

Hutchinson submitted a letter from Kelly Hayes, former UNL cheerleader, who is willing to assist in seeing to it that the program would be well-staffed with qualified and certified safety instructors, spotters, etc.

Hutchinson believes that the staff recommendation of denial is based in part on a communication in which an administrator at Cornhusker State Industries (Dept. of Corrections) expressed concern that with the state facility in such close proximity, there might be some security risk to the children. Hutchinson stated that she did speak with the Assistant Director of Corrections and he has authorized her to tell the Planning

Commission that that is not the position of the Dept. of Corrections. The persons involved in the Cornhusker State Industries program are those who have been specially selected for transition back into the community; that the Dept. of Corrections is always concerned with public safety and does not believe this program would be a threat to the public safety or the children participating in programs at the Nova Sports Center.

3. Jim Hutchinson, the architect for this proposal, indicated that he has reviewed some of the hazardous material statements and he does not believe there has been a determination at this time. He talked with the State Fire Marshall and asked whether they had done any recent inspections of that facility. There have not been any recent inspections and Hutchinson has requested such an inspection to determine that the CSI facility is currently meeting safety standards. Hutchinson was assured that this would be taken care of and whatever is necessary to be in compliance with the state regulations will be done. The Nova Sports building is a type 2N building, solid construction of concrete, with adequate parking. They have tried to provide enough parking so that there is no congestion in the parking lot. There are a lot of different sports being pulled out of the University and High Schools right now due to the economy and Nova Sports is trying to provide an area for young people and adults to come and enjoy themselves and participate in a recreational rather than competitive field.

Steward asked whether Hutchinson had performed a site analysis to determine other possible locations for this facility. Hutchinson indicated that this was the only site available at the time as far as zoning. He believes this proposal could be categorized as a technical training center because they will be doing cheerleading along with other technical sports. He does not understand how this became a "private school" designation. He believes it is a loose interpretation as to whether this is a school or not. He considers it more of a training center. There is not a lot of zoning available for this type facility in this part of Lincoln. He believes that this is a great location being along the Bypass and Highway 2. The Hutchinsons did speak with Cornhusker Manufacturing and they did not believe they had any hazardous material at all. They called and talked to them before this process began.

Steward further inquired whether there were not more available sites than a site in industrial zoning?

Bollerup indicated that he is not entirely surprised with the Department's recommendation nor the recommendation of the Health Dept. This is a position they have taken in the past and apparently nothing has changed. The fundamental premise of the recommendation of Planning and Health is that these types of uses should never exist in an industrial zoning district. That's a position they have taken historically. The problem with that premise is that the issue has already been decided. Back in 1995, there was a text change offered in conjunction with a special permit application for a gymnastics academy within the I-1 zoning district. At that point, both that special permit application and the text change had a staff recommendation and a Health Dept. recommendation that is almost identical with the one

before the Commission today. At that point back in 1995, this body voted unanimously to change the text to specifically allow for these types of uses in industrial zones and also to permit the gymnastics academy to exist within the I-1 zone. That was Special Permit No. 1592, the Solid Rock Gymnastics Academy at 3100 So. 6th Street. Bollerup submitted that the issues have not changed one iota since then.

Bollerup went on to state that the reason for the decision back in 1995 is really no different than the reasons we need to locate in this particular zoning district with this particular project. That is, if we as a community are going to accommodate these types of uses for kids, just about the only place that they will ever exist is in an industrial area. The reason for that is that you need an extremely large building to accommodate these types of uses; you also need a building that is affordable. If these things are going to be permitted so that families can afford them, the building has to be affordable. It also has to have an incredible amount of parking—far more than is ever used for these facilities, but the zoning code requires an incredible number of parking spaces on site. Lastly, it requires access to a transportation system or road network to support that kind of a commercial area. You can't do that in a commercial zone where you are paying seven, eight, nine dollars a square foot for this type of facility—they will never be built. Just about every other similar type of facility, whether it requires a special permit or not, exists in the industrial districts. You rarely see these types of facilities—skating rinks, Champion Fun Center, exercise facilities, those kind of large scale projects—outside of industrial areas. It is interesting to note that this, because it is somehow classified as a “private school” (which he does not quite understand), requires a special permit. Most types of similar uses could exist in the I-1 district without any need for a special permit. We could build Champion Fun Center, which would include more children with less adult supervision and less structure, within this very same zoning district, as a matter of right. We could put in a commercial skating rink as a matter of right; we could put in a commercial gym where you have workout equipment and a basketball court, etc., as a matter of right if marketed strictly for kids under 20 years of age. But because this use is somehow for instruction, it requires the special permit.

Bollerup suggested that the more accurate or more relevant question that needs to be answered with respect to this application is, what is the level of risk posed to this particular project in this particular zone? What is the “realistic” level of risk as opposed to some kind of abstract level of risk that the Department of Health seems to want the Planning Commission to consider. If you look at the I-1 zoning district, the most hazardous types of activities that would ordinarily take place there are regulated by the need for a special permit before they can locate in an I-1 zoning district. I-1 is not “no holds barred industrial” zoning. You don't see huge, heavy industrial in I-1 zoning districts. The types of uses allowed as a matter of right in I-1 zoning districts are precisely the kind of uses you see in this project. In this particular area, there are two plumbing supply distributors, a construction equipment rental facility, and the warehouse for the Department of Corrections—Cornhusker Industries. If you look at the Nova Sports existing building, there are no neighbors at all to the west—it's an open field; we have

no neighbors to the north because that is a nonbuildable drainage area for a creek—it looks like a park. We regard to the area to the west, there is some concern mentioned that we don't know what could be developed to the west. Bollerup submitted that as a practical matter, if it develops at all, it is going to develop very similarly to what has already been developed in this district. That area is not easily developed because of the railroad to the west of that lot with a substantial amount of railroad right-of-way and there is a very limited street system into that vacant lot, so Bollerup believes that we are not likely to any kind of large scale industrial uses develop there ever, let alone within the near future.

Bollerup submitted that the only use that exists there now that could conceivably be deemed at all risky to the proposed operation is the warehouse for Cornhusker Industries. The Department of Health originally suggested that if the applicant could agree to a condition that no hazardous chemicals are stored within 300', they would approve it. This applicant was not willing to do that. The Health Department then checked with Cornhusker Industries and apparently they were told there may be some hazardous chemicals there. Bollerup does not know what they are. The applicant talked to Cornhusker Industries and they said there were none. Cornhusker Industries is a warehouse facility. Cornhusker Industries is the inmate work project where they refinish and build office furniture. The kinds of hazardous materials would be like varnish and stripping materials for rehabilitating office furniture. That's what that is used for. It is not the type of hazardous material that is going to cause widespread risk of harm with clouds of poisonous gas wafting through an I-1 zoning district. All they do there is refinish furniture. You could refinish furniture and store a 55 gallon drum of lacquer in downtown Lincoln or in any of the zoning districts where this use would be allowed as a matter of right. The difference is that Cornhusker Industries is highly regulated by the Department of Health, EPA and the State Fire Marshall so that they have state-of-the-art safety equipment to handle any potential problems that could exist at that site if something like that should happen.

Bollerup agreed that there is some potential risk, small as it may be, but the next relevant question is whether or not the realistic level of risk in this particular site is any greater than what we permit elsewhere in the community on a regular basis. Bollerup submitted that that risk is no greater than what we live with day-in and day-out in every zoning district in this community. We can locate I-1 zoning districts across the street from residential districts and commercial districts throughout the city. There are I-1 zoning districts no further away from residential districts or commercial districts than these uses are away from Nova Sports. If there is an I-1 zoning district across the street from a residential district, we can build this facility as a matter of right in the residential district, even though we are no further away than we are in this case. We could put a grade school across the street from the I-1 district in any of those situations where the residential zoning occurs across the street from the industrial as a matter of right, but because Nova Sports is within the zoning district, somehow that makes Nova Sports different. The risk is no different, but somehow in the Health Department's mind it makes our situation different.

Bollerup also asked the Commission to consider what could be built in I-1 as a matter of right—Champion Fun Center, a skating rink, an exercise facility like the Cottonwood Club. We could build any of those facilities. We could market those strictly to children. We could have that situation where we have less adult supervision and less structure, and we could build that as a matter of right. But because Nova Sports is going to give instruction to the kids, they are required to have a special permit. That is the only difference. That does not change the risk level, it only changes how we are going to go about it and the level of structure and adult supervision that we are going to have, which is actually greater than what we would have on those matter of right uses.

Lastly, Bollerup requested that this request be treated no differently than other similar uses have been treated by the city. For example, Solid Rock Gymnastics Academy is an identical use--an identical special permit. It was approved by this body unanimously, and exists to this day. The only recommendation of any conditions on that special permit was that there not be any storage of hazardous chemicals on the premises. That was a part of the original special permit. That was subsequently amended when it was discovered that there were in fact some hazardous chemicals in a facility by a cotenant of the building, and that condition was then eliminated by the Planning Commission and the City Council. Solid Rock has no condition at all about hazardous chemicals on their premises or elsewhere.

With regard to the proposed conditions of approval in the staff report. Bollerup requested that Condition #2 be deleted: "Upon signature of the letter of acceptance, the permittee agrees to terminate the use of the premises as a private school within sixty days of notification from the building official of the storage of hazardous materials on property within 300 feet of the building used for the private school." This creates an outrageous burden upon the developers of this project. Bollerup pointed out that the can of WD-40 in someone's garage is a hazardous chemical. This applicant cannot live with that condition. No one could live with that kind of condition.

Bollerup generally agreed with Condition #3: "The permittee shall not allow the storage or use of hazardous materials on the premises of the special permit." He can agree with this condition because the developers of this project control the building. There will be an office use in part of the building. There will be a residential sprinkler installation business in one small corner of the building. Neither of these would store any kind of hazardous chemicals. However, Bollerup requested that "hazardous chemicals" be defined realistically. He suggested that a sentence be added to Condition #3: "Hazardous chemicals shall mean types and/or quantities of chemicals which would not otherwise be permitted for use and/or storage in the following zoning districts: B-1, B-2, B-3, H-2 or H-3." We could build this facility as a matter of right in any of those zoning districts. This additional language allows for reasonable accommodation of the normal types of "hazardous chemicals" that would otherwise be stored in virtually any kind of business district.

Bollerup requested an amendment to Condition #2.1.10 and #2.1.12 to correspond with the deletion of Condition #2 and the amendment to Condition #3.

Bollerup also noted that Condition #2.1.11 requires an emergency shutoff switch for the ventilation system. This is a condition that this applicant proposed in order to prevent any kind of ventilation problems if there were a spill somewhere in the neighborhood. This goes above and beyond the requirements of any other special permitted use like this or any other use like this in an industrial area.

Bollerup requested that this application be approved. The developer is willing to make reasonable accommodations to promote legitimate safety issues, but don't hold this developer to a higher standard than virtually any other use in this city. And certainly, don't put conditions on this special permit that as a practical matter make it impossible to operate. If we are going to accommodate these uses, they will occur in I-1. The ordinance provides for that and provides a means to make reasonable accommodations to address the health issues, but it certainly is not some kind of standard preclusion of that use through unreasonable conditions or a flat out bar to that use.

4. Kelly Hayes testified in support. She attended UNL for her undergraduate work and she was a cheerleader at the University. Despite all of the problems that have gone on with Nebraska cheerleading recently, she knows that there is a huge demand for a gym such as is being proposed. A lot of the movement in cheerleading competition and gymnastics competition has moved towards a club perspective. She believes that it ends up being a more safe and more fun environment. The Hutchinsons have what it takes to have a successful business. They are taking the proper safety precautions, dedication and money to make this work. They will provide qualified spotters and it will be a safe and fun place for kids.

Opposition

1. Rick Thorson, Assistant Chief for Environmental Public Health at the Lincoln-Lancaster County Health Dept. and Chris Schroeder, Environmental Engineer in the Air Quality Section of the Health Department, appeared on behalf of the Health Department. Thorson stated that the Health Department supports any kind of activity that encourages physical development and exercise. However, the Health Department does have grave concerns when we look at allowing children to be subjected to potential risks in an I-1 situation. The Health Department has checked with Cornhusker State Industries and has acquired copies of the Material Safety Data Sheets (MSDS) that are required to be stored on site.

Thorson believes that the intent of the ordinance allowing schools or trade schools in the I-1 zoning is really for industrial trade schooling such as plumbing, electrical, structural

engineering, trade schools, construction. He does not believe the intent was ever to allow a gymnastics facility with young children coming and going. Some of these children may come several times a week. Thorson believes the intent of the ordinance is for post-high school individuals who are learning a trade.

As far as the future in this I-1 area, Thorson suggests that we do not have any idea what could come in the future or what types of industry could be located there in the future. There is little or no control over that type of thing. We would have no control because that is the nature of the I-1 zoning ordinance.

The petitioner has mentioned the Solid Rock Gymnastic organization. Thorson agreed that Solid Rock is located in an I-1 district, and yes, indeed, the Health Department did have a problem there. There was a problem with hazardous materials. Thorson pointed out that two wrongs do not make a right.

Thorson submitted the MSDS. Some of the chemicals contained in the data sheets include formaldehyde, hexane, hydrochloric acid, methanol, methyl ethyl ketone, toluene and xylene, to name a few. Also in those MSDS under the health related information, Thorson referred to some of the problems that can occur: irritation of respiratory tract, mucous membrane irritation, fatigue, drowsiness, dizziness, headache, loss of coordination, nausea, vomiting, central nervous system depression, anesthetic effect, narcosis, irritation of eyes and ears, allergic reactions, severe stomach pain, rapid heart beat, choking sensation, unconsciousness, peripheral nerve damage, female and male reproductive damage, chest pain, pink frothy sputum, lung tissue damage, chemical pneumonia, extremely high concentrations may result in blindness, chronic exposure may cause liver and kidney damage. These health risk assessments are based on an otherwise healthy average 35-year old male that weighs about 170 lbs. They are not based on young children who are still in the physical developmental stage. This is the main premise for the Health Department's opposition for this type of activity in an I-1 zone.

Thorson again referred to the case involving Solid Rock Gymnastics. As it turned out, the Health Department worked with the neighbor in that case and they were able to design a better system to contain those vapors, preventing them from going into the Solid Rock facility.

Thorson displayed a map and photos of the proposed facility. Located directly across the street to the southeast of the proposed site is Cornhusker State Industries (CSI). They do store chemicals there and transport them back and forth to the correctional facility where mixing and repackaging occurs. These chemicals are transported right in the street that separates the proposal facility from CSI, using a simple tractor with an open trailer. Anyone can see that this could lead to the potential for a spill. In addition, there is a 300' buffer zone required to store and transfer hydrochloric acid. The proposed site is within that 300' buffer zone. Clearly, there is a potential health risk. The hazards are real.

With regard to the storage of hazardous materials in the facility, Thorson stated that the Health Department does not object to janitorial supplies, WD-40, common cleaning supplies—even those that are more industrial in nature—in small quantities typically stored in well-contained areas. The Health Department does have a problem with the potential for release at Cornhusker State Industries and a problem with potential for future location of various industrial facilities within that area. Thorson re-emphasized that the Health Department does support physical activity. Many of the Health Department employees have children that are in gymnastics and cheerleading. We would love to see this kind of facility come into an area that is not subject to these types of hazards, and that is the bottom line for the Health Department.

Duvall asked whether the MSDS refer to the quantities of the materials that are on hand at any one given time, the age of the chemicals and the rate of use. **Chris Schroeder** stated that he spoke with Don Lincoln, one of the site managers of CSI, and 99% of their business is the purchase of bulk chemicals—55 gallon drums. When Schroeder was on site they probably had on hand 15-20 drums of these chemicals. They take these chemicals by way of the tractor and open trailer over to the State Penitentiary where the inmates pare them down into smaller containers and box them up. That is their finished product. The finished product is then brought back to CSI for shipment. Therefore, there are multiple handlings of chemicals. The quantities are very dynamic.

Duvall noted the amount of MSDS, but what type of chemicals do they have a lot of and at what point in time? Schroeder stated that the chemicals listed on all of the MSDS are on site—maybe not all at once, but they have to have this MSDS because they handle those chemicals. In further answer to the question, Schroeder stated that CSI had hydrochloric acid, phosphoric acid, toluene, xylene and some of the more flammable substances on site when he visited. Schroeder confirmed that these chemicals are purchased by CSI in large quantities, pared down into smaller containers and then sold to nonprofit agencies.

Response by the Applicant

Bollerup observed that Thorson is incorrect in his declaration of the intent of the special permit ordinance. It specifically mentions “dance academies and gymnastics academies” in addition to the trade school types of things. They are specifically mentioned. That is why we’re here. If it wasn’t specifically mentioned, Bollerup would call it an exercise facility and go out and build it. This special permit ordinance is not limited to trade schools.

With regard to the Solid Rock situation, Bollerup explained that there was a spill on premises by a cotenant. It was that spill that generated that applicant to come forward and ask for an amendment to the special permit, allowing the storage of those chemicals on the premises,

and that was passed. That wasn't something that occurred afterwards. That was something that triggered them to come in and ask for the amendment that was ultimately granted allowing them to store chemicals within the same building as their operation.

Bollerup believes there has been an attempt here to scare the Commission. He finds it a little bit offensive. These same types of chemicals can be stored in the B-1, B-2, B-3, H-2 and H-3 zoning districts. Sure, if you read the warning label on them, there is a list of horrors that can happen. If you took a 55 gallon drum and poured it on the dance floor, we might have a problem. But the fact is that we as a society live with these chemicals in our midst on a regular basis. They are not limited to the I-1 zoning district. You could build this same warehouse in the H zoning districts and Nova Sports could locate there as a matter of right and there would not be an issue at all with respect to these chemicals.

Staff questions

Steward asked staff to enumerate the districts where this facility would be allowed by right. Becky Horner of Planning staff stated B-1, B-3, B-4 (Downtown), H-2 and H-3. You can also get a special permit in any of the residential districts, O-1 and O-2 for this use. The only districts where you cannot do this are H-1, H-4, I-2 and I-3.

Schwinn knows that there is a building project located at the CSI site with inmates actively building homes for low income outstate sites and they have plans to increase that to building at least 8 houses at a time, which would mean an awful lot of inmates on that site that are not supervised all that well, being minimum security inmates. Horner indicated that it was the Health Department that talked with CSI. She did not. However, the ordinance does not talk about this issue so the staff would not have reviewed it in considering this special permit. There is nothing in the ordinance about locating next to prison facilities.

Carlson believes that there is something in the special permit language that provides consideration for health, safety and welfare. Horner agreed that this is in the Comprehensive Plan and she cited it in the staff report.

Bollerup pointed out that the work release center at Airpark is located next to a residential area where there are city parks and recreation facilities where kids come and go on a regular basis. The types of inmates located here are basically trustees who are ready to be released back into the community. We have businesses located right next to the Penitentiary with far more dangerous people than what you would have anywhere near the proximity of this facility. Frankly, if we're going to get to the situation where we say well, a prisoner may escape and that causes a risk of harm to this particular facility, Bollerup would then argue that maybe we shouldn't be locating prisons within the city. If you are going to assume that prisoners are going to escape, then the entire community is at risk. Not just this one facility. Bollerup suspects that if someone escapes from across the street, the last thing they are going to do

is stop and watch some kids practicing cheerleading. They are going to want to get out of that area rather than loiter in that area and try to harass patrons of this business.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 17, 2002

Newman moved to deny, seconded by Carlson.

Newman thinks it is a wonderful idea but it's the wrong location. Seeing the Health Department at this hearing and with them being so adamant about this application being wrong, she is pleased to support the Health Department.

Duvall stated that he will vote against the motion to deny. The chemicals they have are common and widely used. We have gas stations around with fuel tanks. Gasoline is more explosive than any of these chemicals and we use that as part of our life. He cannot see where the chemicals in that area are an issue.

Taylor likes what they are proposing to do; however, he does not feel comfortable having that facility in that industrial type area.

Carlson disagrees with the argument that one special permit means that we should approve a second permit. The purpose of special permit process is to suggest that a particular use "may" be suitable for a particular zoning district, depending on all of the other criteria that fall around it. In this circumstance, because the code says it "may" be appropriate in a certain zoning district does not mean that it "must" be. In this case, he does not believe it is the appropriate location.

Motion to deny carried 6-2: Newman, Steward, Larson, Carlson, Taylor and Schwinn voting 'yes'; Duvall and Bills-Strand-Strand voting 'no'; Krieser absent.

This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 1970,
TO PERMIT THE SALE OF ALCOHOL
FOR CONSUMPTION OFF THE PREMISES,
ON PROPERTY GENERALLY LOCATED
AT SO. 48TH STREET AND RANDOLPH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 17, 2002

Members present: Newman, Steward, Larson, Bills-Strand, Carlson, Duvall, Taylor and Schwinn; Krieser absent.

Staff recommendation: Denial.

Proponents

1. **Rob Otte** appeared on behalf of the applicant and requested a two-week deferral. The applicant has met with the staff and would like additional time to further develop a mitigation plan.

Steward moved to defer for two weeks, with continued public hearing and administrative action scheduled for May 1, 2002, seconded by Bills-Strand and carried 8-0: Newman, Steward, Larson, Bills-Strand, Carlson, Duvall, Taylor and Schwinn voting 'yes'; Krieser absent.

Opposition

1. **Jim Iosbaker**, Tabitha Health Care Services, 4720 Randolph Street, testified in opposition. Iosbaker stated that Tabitha would like to be on record in opposition to the sale of alcohol at this facility because it is in very close proximity to Tabitha's residential housing of approximately 150 seniors. These are independent living apartments and most of the people are ambulatory. When the weather is good they walk in this area. The sale of alcohol would increase danger to them because of the increase in traffic. The Tabitha Intergenerational Center is two blocks north, where there are 40-60 children and 6-12 seniors daily. Also, the location is between the elementary school and the junior high school, which are both on the same side of the street and there is a large number of junior high kids walking to and from school down 48th on that side of the street. Tabitha also takes the position that the Super Saver which is less than one mile away has a very adequate liquor establishment.

PRELIMINARY PLAT NO. 02002
FAIRWAY PARK,
ON PROPERTY GENERALLY LOCATED
AT NORTH 27TH AND THERESA STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 17, 2002

Members present: Newman, Steward, Larson, Bills-Strand, Carlson, Duvall, Taylor and Schwinn; Krieser absent.

Staff recommendation: Conditional approval.

Proponents

1. **Ron Ross** of Ross Engineering, 201 No. 8th, appeared on behalf of the developers, Bill and Corinne Jarrett, who are part owners of Jarock, the property owner. This site is located on the south side of Theresa Street at the entrance to the wastewater treatment plant on 7.2 acres, zoned industrial, and currently occupied by about 80 mobile homes. This property has been in the Jarrett family since 1955. Bill Jarrett was raised in the Shamrock Mobile Home Court until the late 1980's. This mobile home court is a bit more upscale than others due to the care it has had over the years. The problem is the maintenance and repair. This facility was started in the 1950's but with undue repair bills at this time, it is becoming unprofitable. The Jarretts are concerned and due to unprofitability and potential changes of land use requirements within the floodplain, they are requesting this preliminary plat.

Ross advised that there was a letter that went out in January to the tenants informing them of the long term plans for this property. That letter outlined some history and explained what is going on. There have been no contacts from the tenants and there have been very few calls in response to this letter. The Jarretts own about 40% of these mobile homes. They have been planning to eventually phase out this project and they will develop this preliminary plat in two phases, the first being the northernmost portion. There are 10 lots and 1 outlot with a private roadway. Water will be public. Everything else will be private and maintained by a property owners association.

Ross further advised that the concern over what may happen with the floodplain regulations has encouraged this developer to become active in protecting their interests. They have no plans, they have no building permits. This is a long range plan to phase out of the mobile home business and get into some form of commercial service, industrial type uses.

Ross indicated that he has talked with his client and they have agreed to develop this property similarly to the project to the north without substantial fill.

The applicant agreed with all conditions of approval, except for Condition #1.1.1 which talks about extension of sidewalks. Ross pointed out that there is a sidewalk on the north side all the way from 27th to the front door of the wastewater treatment plant. You then run into a railing and a brick entrance effect that prohibits movement further to the west. Ross agreed to provide sidewalks on both sides of the private roadway; however, they have left the sidewalk off from this development's private driveway entrance to the west about 166'. It is at a larger brick wall that that sidewalk will terminate. There are no sidewalks within the wastewater treatment facility until you get up to their buildings between parking lots. Ross believes that future tenants will more than likely not head west into the wastewater treatment facility on foot. Therefore, Ross requested to amend Condition #1.1.1:

Sidewalks along Theresa Street abutting this property. The sidewalk between the Private Roadway and the west property line must be constructed by the abutting property owner upon construction of a sidewalk within the Theresa Street Wastewater Facility along the south side of Theresa Street. No escrow shall be required for this sidewalk.

There will be an agreement that should that property owner in the future develop and want to put a sidewalk in, they can do so. That sidewalk would cost \$1900 and no one is going to use it.

With regard to Condition #3.3.8, Ross noted that this provides that there be no more fill than illustrated in the grading plan unless a particular property owner comes in by administrative amendment and revises a grading plan to fit their exact scheme. To avoid a problem with Building & Safety in the future, Ross requested to amend Condition #3.3.8:

To inform all purchasers and users that the land is located within the 100 year flood plain and that the grading of the lot shall be in conformance with the grading plan approved with the Fairway Park Preliminary Plat #02002 or as amended by the Director of Planning. The volume of fill material brought into each lot from outside the flood plain shall not exceed that shown on the approved grading plan accompanying the preliminary plat, or as amended by the Planning Director.

Opposition

1. Katherine Westwood, who lives at F8 on the north side, testified that she is not in favor nor opposed. She believes that there are positive reasons to approve this plat because the property is zoned for industrial; however, she believes that the excuse of the 100-year floodplain is used too much. She wanted the Commission to be aware that the odors from the sewer (which she understands are currently being examined) permeate the interior of the trailers, furniture, clothes and cars, and even the water. But, of course, the Sheriff and Mrs. Jarrett have a right to use their property as they choose.

Westwood wonders whether the Planning Commission or even the City Council consider the people affected by these decisions. According to Jason Reynolds in the Planning Department, statistics, research, and surveys about the affect on people is not required to be considered--just that they be notified. Are there any city, county, state or federal funds available for the relocation of the people affected by these decisions that will be required to relocate? Over 50 families will be displaced by the elimination of this trailer court. This is in addition to the ones previously dislocated by the Shady Elm mobile home park. There are homeless residents living in the shelters and living in cars. Even the Governor has asked for more space for the homeless. This decision will affect people to the point of homelessness. She asked the Commission to please consider the variables involved. There should be funding made available for those people who will be required to relocate.

Westwood submitted that the current laws and regulations do not adequately protect all of the citizens involved. She requested that the Planning Commission require research and a survey about the effect of their decisions on these citizens. Research should be done to find funding for the relocation of these people. She is also concerned about the cost of relocation being transferred back to the people who live in that area.

Response by the Applicant

Bill Jarrett stated that he and his wife have worked really hard in this mobile home park. They have not done this the way that Shady Elm did theirs. They have gone about this methodically. He and his wife own over 50% of these mobile homes. They understand the issues with relocation of the tenants, but this is going to be a long term process. They have talked with many of the people that live there through the process of purchasing the mobile homes. They have tried to eliminate as much conflict as possible. Sometimes it has been a burden to him financially, but it is his desire to do this as fairly and painless as possible.

Jarrett explained that when his father purchased this property, it was not in the floodplain and was not in the city. It was part mobile home park and part turkey farm. Subsequently, it became a mobile home park and through the ages it became part of the city. The floodplain issue has gone back and forth over the last 50 years. We went from residential zoning to I-1 zoning. That is how we end up here today being in the city, in the floodplain and under the regulations of an industrial park.

Having gone through the Shady Elm situation, Newman extended appreciation to the Jarretts for the amount of notice given to the tenants. How quickly will you move on this? Jarrett stated that frankly, it is really up to the city because of the new floodplain standards. There are some rumors out there and he is asking the Mayor for clarification. We as landowners, have an investment and long term goals, and you can imagine what this does to the owner of industrial

property financially when the city comes in and says there will be no more building in the floodplain areas. Jarrett is hoping the city will give enough warning so that they can proceed accordingly. He would have been happy to leave it as a mobile home park.

Jarrett clarified that they have 6-month or one-year leases on the mobile homes. The spaces are rented on a month-to-month basis.

Staff questions

Schwinn pointed out that the staff report history does not cover when and why the zoning was changed to I-1. He wondered whether the I-1 change was done by the city. Jason Reynolds of Planning staff did not have that information available. Jarrett informed the Commission that he did not apply for the I-1 zoning.

Newman advised that she is serving on the floodplain task force and they don't know what they're doing yet. If Jarrett wants to continue running this as it is now, the floodplain task force does not have the authority to require them to move. Reynolds suggested that the owner believes that the potential recommendations of the floodplain task force could affect the future potential for the property. This plat gives them a 5-year window within which to develop. After 5 years, they could be required to meet current regulations at the time of that application.

Schwinn wondered whether the improvements have to be installed prior to final plat. Reynolds advised that they will be required to post the bonds or escrows for the improvements.

Reynolds agreed with the applicant's proposed amendment to Condition #3.3.8 regarding the fill; however, he suggested that granting the requested amendment to Condition #1.1.1 regarding the sidewalk is a decision that the Planning Commission should make.

Jarrett explained that the existing floodplain regulations require them to raise the homes to the floodplain level, the air conditioners have to be raised up, and any sheds have to be raised up on any new mobile homes. This becomes very costly and prohibits him from operating the property as mobile home park. It puts the mobile homes 4-5 feet in the air. It is not cost-effective.

Ross added that the owner will absolutely give the tenants a 90-day notice. The Jarretts truly have no plans right now to do anything. It is a long term plan and the floodplain regulations scare them. The Jarretts are approaching this totally different than the Shady Elm situation. Ross also suggested that the city is very much interested in this not continuing on as a mobile home park. It would be very helpful and positive if the city could look into some form of relocation assistance. He challenged the Planning Commission to try to do something about this need. The relocation with this application will happen over a long period of time but certainly with adequate notification.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 17, 2002

Steward moved approval of the staff recommendation of conditional approval, with the two amendments requested by the applicant, seconded by Bills-Strand.

Steward complimented this owner for taking a different strategy than the Shady Elm situation and being more sensitive. However, that has not alleviated the problem for some people. We don't have a solution to this relocation issue. If we did, we would articulate it quickly and firmly and be assured that it was in our power to take care of it. It apparently is not even in the power of the city at the moment. However, he would hope that both the property owner and the tenants would address the City Council and Urban Development with this matter, and continue to try to be a catalyst for search for the people who are living in barely affordable circumstances. It is in his personal view a part of the city's responsibility to take care of affordable housing in this community and to have programs to take care of the people in those circumstances.

Motion for conditional approval, with amendments, carried 8-0: Newman, Steward, Larson, Bills-Strand, Carlson, Duvall, Taylor and Schwinn voting 'yes'; Krieser absent.

ITEM NOT ON THE AGENDA:

April 17, 2002

Members present: Newman, Steward, Larson, Bills-Strand, Carlson, Duvall, Taylor and Schwinn; Krieser absent.

1. Craig Groat addressed the Commission regarding his concern for lack of focus by the business community on creation of quality jobs for the graduates of our University. He referred to and cited from the Educational Testing Study report by the Educational Testing Service, which is a nonprofit company that provides outstanding research:

- Demand for technical skills is overstated.
- Office work dominates the U.S. economy.
- Office workers earn 47% more than non-office workers.
- Our industrial economy has fallen.

Schwinn suggested that Groat provide the Commissioners with a copy of the study. Groat was more interested in reading from the study for the viewing audience because he believes it is important information for everyone to have.

There being no further business, the meeting was adjourned at 3:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on May 1, 2002.